

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Comments Sought on the Technological Transitions of
the Nation's Communications Infrastructure

GN Docket No. 12-353

AT&T Petition to Launch a Proceeding Concerning
the TDM-to-IP Transition

Petition of the National Telecommunications
Cooperative Association for a Rulemaking to Promote
and Sustain the Ongoing TDM-to-IP Evolution

Policies and Rules Governing Retirement Of Copper
Loops by Incumbent Local Exchange Carriers

RM-11358

Comment on Request to Refresh Record and Amend
the Commission's Copper Retirement Rules

DA 13-147

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: March 5, 2013

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The Massachusetts Department of Telecommunications and Cable (MDTC)¹ respectfully submit these comments in response to the Public Notice released by the Federal Communications Commission (FCC) on February 4, 2013.² In the Public Notice, the FCC sought comment on the request of Mpower Communications Corp., U.S. TelePacific Corp. (together, TelePacific); ACN Communications Services, Inc.; Level 3 Communications, LLC; TDS Metrocom, LLC; and

¹ The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16. Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

² See *Wireline Competition Bureau Seeks Comment on Request to Refresh Record and Amend the Commission's Copper Retirement Rules*, GN Docket No. 12-353; RM-11358, FCC Public Notice, DA 13-147 at 1 (rel. Feb. 4, 2013) (Copper Retirement Rules Public Notice).

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) (collectively Petitioners) that the Commission update the record and amend the copper retirement rules.³

I. ANY REVIEW OF THE COPPER RETIREMENT RULES SHOULD OCCUR IN COORDINATION WITH THE IP TRANSITION.

The FCC has received several filings concerning the copper retirement rules. The two petitions for rulemakings, docketed in RM-11358 that Petitioners seek to have refreshed, were submitted in 2007.⁴ The FCC also just received comments on two petitions, docketed in GN Docket No. 12-353, that propose forbearing or revising the copper retirement rules.⁵ In addition, the FCC recently extended the deemed granted date for a United States Telecom Association petition requesting forbearance of the copper retirement rules.⁶ Moreover, the FCC launched the Technology Transitions Policy Taskforce to coordinate the review of regulations, such as the copper retirement rules, that may require updating as communications service providers transition their networks from circuit-switched to Internet Protocol (IP) based packet-switched networks, commonly referred to as the IP transition.⁷ Thus there is a strong sentiment among

³ *Id.* at 1; *See* 47 C.F.R. §§ 51.319; 51.325; 51.331; 51.335 (regulations addressing the process for a local exchange carrier (LEC) to no longer use existing copper loops or copper subloops within the LEC's network).

⁴ *In the Matter of Petition for Rulemaking and Clarification, BridgeCom International, Inc., et al.*, RM-11358 (filed Jan. 18, 2007) (BridgeCom Petition); *In the Matter of XO Communications, LLC, et al. Petition for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops*, RM-11358 (filed Jan. 18, 2007) (XO Communication Petition).

⁵ *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353 (filed Nov. 7, 2012) (AT&T Petition); *In the Matter of Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353 (filed Nov. 19, 2012) (NTCA Petition).

⁶ *In the Matter of Petition of USTelecom for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Wireless Competition Bureau Order, DA 13-172 at 1 (rel. Feb. 7, 2013).

⁷ *See* FCC News Release, "FCC Chairman Julius Genachowski Announces Formation of Technology Transition Policy Task Force" (rel. Dec. 10, 2012) *available at* <http://www.fcc.gov/document/fcc-chairman-announces-technology-transitions-policy-task-force> (last viewed Feb. 18, 2013).

certain stakeholders that the existing rules should be reviewed.⁸ If the FCC undertakes a review of the existing rules it should consider potential changes within the broader context of the IP transition, the fulfillment of its mission, and the appropriate continuing role for state actors.⁹ As the MDTC recently stated, the FCC in facilitating the IP transition of communications networks and services, “must fully consider how the existing regulatory landscape currently serves and how it will continue to fulfill the FCC’s mission [of regulating communication by wire and radio] to advance public safety, protect consumers, promote competition, and ensure a reliable universal network.”¹⁰

II. THE FCC SHOULD STREAMLINE NETWORK AND SERVICE NOTIFICATION REQUIREMENTS.

If the FCC reviews the copper retirement rules, it should consider revising the notice of network changes regulations¹¹ to align required Incumbent Local Exchange Carrier (ILEC)¹² action with the notification requirements where a carrier plans to discontinue, reduce, or impair

⁸ Compare XO Communications Petition with *In the Matter of Petition of USTelecom for Forbearance Under 4747 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61 (filed Feb. 16, 2012) (USTelecom Petition).

⁹ As a part of any review of the copper retirement rules and the broader consideration of the IP Transition, the FCC should take care to preserve states’ existing authority. Preserving states’ authority is vital because Massachusetts and other states are in the best position to understand how copper retirement and other aspects of the IP transition will affect the security, reliability, and resiliency of the communications network; residential and business consumers; and the competitive landscape within their jurisdictions. The National Association of Regulatory Utility Commission’s (NARUC) Federalism Task Force affirmed such general principles in their recently released *DRAFT Federalism Principles* (rel. Feb. 15, 2013) available at http://www.naruc.org/Publications/2013_02_15_FederalismPrinciples.pdf.

¹⁰ MDTC Comments, *Comments Sought on the Technological Transitions of the Nation’s Communications Infrastructure*, GN Docket No. 12-353, *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (filed Jan. 28, 2013) at 2-3 (MDTC IP Transition Comments).

¹¹ 47 C.F.R. §§ 51.331, 51.333.

¹² See 47 C.F.R. 51.5 (An ILEC is “[w]ith respect to an area, the local exchange carrier that (1) [o]n February 8, 1996, provided telephone exchange service in such area; and (2)(i) [o]n February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to [47 C.F.R.] § 69.601(b) []; or (ii) [i]s a person or entity that, on or after February 8, 1996, because a successor or assign of a member described in paragraph (2)(i) []. As an example, in Massachusetts, Verizon New England, Inc. d/b/a Verizon MA is an ILEC.

service¹³ to streamline notification processes. Specifically, the FCC should consider requiring ILECs to notify state commissions of their requests to retire, replace, or discontinue the use of copper loops or copper subloops and permit states to object to those requests. Under the current network notification regulations, the FCC releases a public notice, an ILEC directly notifies telephone exchange service providers that directly interconnect with the ILEC's network, and only those providers that interconnect with the ILEC's network may object to the notices.¹⁴ State commissions, unless they have adopted their own rules, must rely on seeing the public notice issued by the FCC. This process is inefficient. ILECs should provide state commissions with direct notice of their requests to retire, replace, or discontinue use of copper within a state and state commissions should have 30 days from the FCC's release of the public notice to object to the request to retire copper loops or copper subloops.

Adopting such revisions would bring the notice of network change regulations in line with notification requirements where a carrier plans to discontinue, reduce, or impair service.¹⁵ The copper retirement rules are premised on the retention of services through the replacement of copper loops or copper subloops with fiber-to-the-home loops or fiber-to-the-curb loops. But, the potential effect a network change may have on the continued availability of existing services contravenes the need for differences in the notification and objection processes. Aligning the notifications and objection processes for changes to networks and services will ease the burden on interested parties and ensure the FCC will have the opportunity to consider the full effect of a network change in one proceeding. Further, extending the right to state commissions to object to an ILEC's request will help the FCC ensure that the retirement of copper loops or copper

¹³ See 47 C.F.R. § 63.71

¹⁴ *Id.*

¹⁵ See 47 C.F.R. § 63.71

subloops does not hinder the provision of services to residential and business consumers. Such a change would: protect consumers without relying on states to adopt their own rules; no longer require reliance on ILECs to identify the effect the network change has on available services, and expand objections to network changes beyond purely competitive concerns.

III. CONCLUSION

The FCC has received numerous requests to review and update the copper retirement rules. Any review of the existing copper retirement rules it should consider potential changes within the broader context of the IP transition, the fulfillment of its mission and the appropriate continuing role for state actors. If the FCC considers updating the copper retirement rules, it should consider streamlining current notifications processes by revising the notice of network changes regulations to align the notice requirements with the notice requirements where a carrier plans to discontinue, reduce, or impair service.

Respectfully submitted,

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